

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
FORT LAUDERDALE DIVISION

CASE NO. 23-61617-CIV-CANNON/Hunt

**PROFESSIONAL KITCHEN  
INSTALLER GROUP INC.,**

Plaintiff,

v.

**BENJAMIN COLON JR., NATALIA OSORNO COLON, and  
G.O.A.T COMMERCIAL KITCHEN INSTALLATIONS, LLC,**

Defendants.

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**ORDER ACCEPTING MAGISTRATE JUDGE'S REPORT AND  
RECOMMENDATION; DENYING DEFENDANTS' MOTION TO DISMISS; AND  
ORDERING DEFENDANTS TO RESPOND TO AMENDED COMPLAINT**

THIS CAUSE comes before the Court upon Magistrate Judge Hunt's Report and Recommendation on Defendants' Motion to Dismiss Plaintiff's Amended Complaint (the "Report") [ECF No. 24], issued on February 16, 2024. Upon review of the Motion [ECF No. 18], Plaintiff's Response in Opposition [ECF No. 19], and the Report [ECF No. 24],<sup>1</sup> the Court hereby ACCEPTS the Report [ECF No. 24]; DENIES Defendants' Motion to Dismiss [ECF No. 18]; and orders Defendants to file an answer or response to Plaintiff's Amended Complaint [ECF No. 6] on or before **March 12, 2024**.

**BACKGROUND**

On February 16, 2024, following referral, Magistrate Judge Patrick M. Hunt issued a Report recommending the Court deny Defendants' Motion to Dismiss Plaintiff's Amended

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<sup>1</sup> Defendant did not file a Reply in support of its Motion or otherwise address Plaintiff's arguments about Florida law [ECF No. 19 p. 3].

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Complaint and permit Defendants an opportunity to respond to Plaintiff's Amended Complaint [ECF No. 24 pp. 3–5]. Objections to the Report were due on February 23, 2024 [ECF No. 24 p. 6]. No party has filed objections, and the time to do so has expired.

### **LEGAL STANDARDS**

To challenge the findings and recommendations of a magistrate judge, a party must file specific written objections identifying the portions of the proposed findings and recommendation to which objection is made. *See Fed. R. Civ. P. 72(b)(3); Heath v. Jones*, 863 F.2d 815, 822 (11th Cir. 1989); *Macort v. Prem, Inc.*, 208 F. App'x 781, 784 (11th Cir. 2006). A district court reviews de novo those portions of the report to which objection is made and may accept, reject, or modify in whole or in part, the findings or recommendations made by the magistrate judge. 28 U.S.C. § 636(b)(1). To the extent a party fails to object to parts of the magistrate judge's report, the Court may accept the recommendation so long as there is no clear error on the face of the record. *Macort*, 208 F. App'x at 784. Legal conclusions are reviewed de novo, even in the absence of an objection. *See LeCroy v. McNeil*, 397 F. App'x 554, 556 (11th Cir. 2010); *Cooper-Houston v. S. Ry. Co.*, 37 F.3d 603, 604 (11th Cir. 1994).

### **DISCUSSION AND CONCLUSION**

Following review, the Court finds no clear error in the Report. Accordingly, it is hereby **ORDERED AND ADJUDGED** as follows:

1. The Report and Recommendation [ECF No. 24] is **ACCEPTED**.<sup>2</sup>

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<sup>2</sup> Although it is unclear whether Plaintiff is relying on the “lost or destroyed” language referenced in *Env't Servs., Inc. v. Carter*, 9 So. 3d 1258, 1268 (Fla. Dist. Ct. App. 2009), Fla. Stat. § 90.954(3) contains other, potentially applicable provisions, and in any event, it appears the ultimate question (at least on this issue) will be whether the Court is satisfied as to the essential terms of the purported non-compete. Defendant neither filed a Reply nor timely objected to the Report.

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2. Defendants' Motion [ECF No. 18] is **DENIED** in accordance with the Report.<sup>3</sup>
3. **On or before March 12, 2024**, Defendants shall answer or respond to Plaintiff's Amended Complaint [ECF No. 6].

**DONE AND ORDERED** in Chambers at Fort Pierce, Florida, this 26th day of February 2024.



**AILEEN M. CANNON**  
**UNITED STATES DISTRICT JUDGE**

cc: counsel of record

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<sup>3</sup> Defendant is not precluded from making its "writing" argument at later stages of this proceeding. *See Fla. Stat. § 542.335* (prohibiting a court from enforcing a restrictive covenant "unless it is set forth in a writing signed by the person against whom enforcement is sought").